
STATE OF CALIFORNIA
COMMISSION
ON JUDICIAL
PERFORMANCE
1992 ANNUAL REPORT

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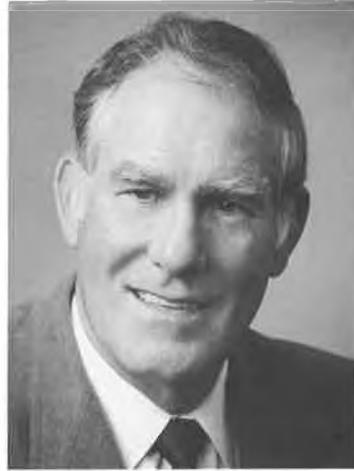
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COMMISSION MEMBERS



HONORABLE ARLEIGH WOODS
Chairperson
Presiding Justice, Court of Appeal
Second Appellate District, Division Four
Los Angeles
Appointed May 1986
Present term expires March 1993



ANDY GUY
Vice Chairperson
Public Member
Lodi
Appointed November 1985
Present term expires
October 1993



**HONORABLE
RUTH ESSEGIAN**
Judge of the Municipal Court
Los Angeles
Appointed May 1990
Present term expires
January 1996



CHRISTOPHER J. FELIX
Public Member
Santa Ana
Appointed June 1992
Present term expires
June 1996

COMMISSION MEMBERS continued



EDWARD P. GEORGE, JR.
Attorney Member
Long Beach
Appointed January 1991
Present term expires
December 1994



**HONORABLE
INA LEVIN GYEMANT**
Judge of the Superior Court
San Francisco
Appointed September 1988
Present term expired
November 1992



**HONORABLE
WILLIAM A. MASTERSON**
Outgoing Superior Court
Judge Member
Los Angeles
Appointed February 1989
Membership terminated upon
appointment to Court of Appeal
January 1993



JAMES W. O'BRIEN
Attorney Member
Costa Mesa
Appointed March 1992
Present term expires
December 1996



**HONORABLE
EUGENE M. PREMO**
Associate Justice
Court of Appeal
Sixth Appellate District
San Jose
Appointed February 1989
Present term expires
November 1994

COMMISSION STAFF

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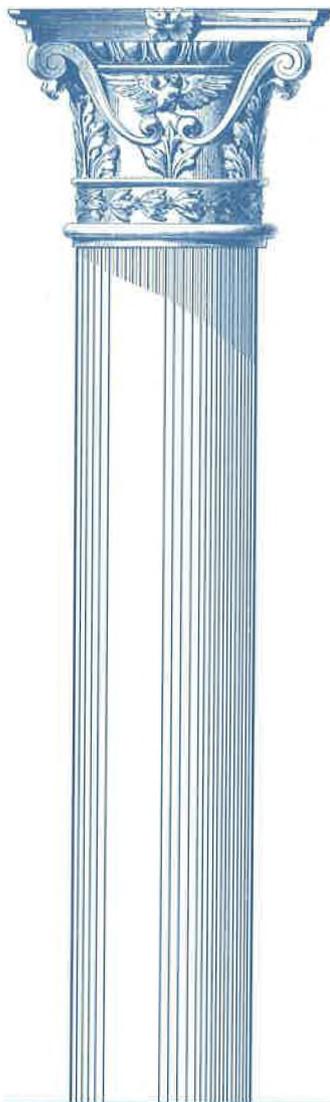
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BARBARA JO WHITEOAK
Judicial Secretary

I.
THE
COMMISSION
IN 1992:
AN OVERVIEW



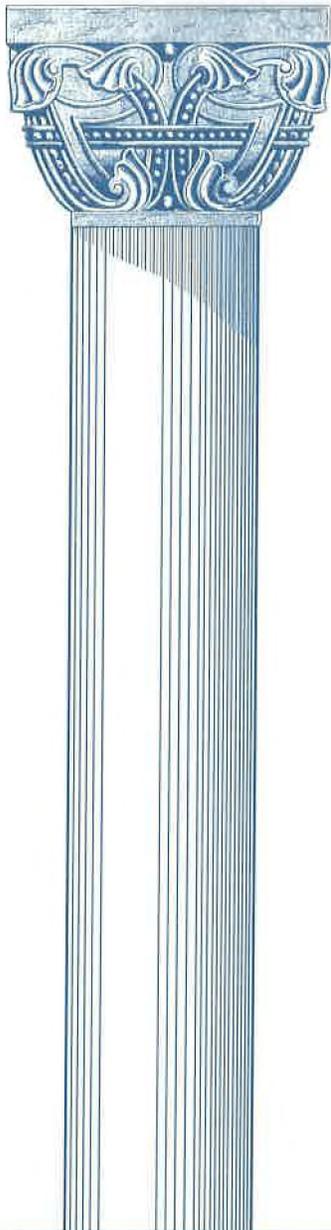
The Commission on Judicial Performance is an independent state agency that handles complaints involving judicial misconduct and disability of state judges. The commission was founded in 1960. It has nine members: two justices of the courts of appeal, two judges of the superior courts, and one judge of a municipal court, all appointed by the Supreme Court; two attorneys appointed by the State Bar; and two lay citizens appointed by the Governor and approved by a majority of the Senate. Each member is appointed to a term of four years. The terms are staggered. The commission employs a staff of twelve.

The commission's primary duty is to investigate charges of wilful misconduct in office, persistent failure or inability to perform the duties of a judge, habitual intemperance in the use of intoxicants or drugs, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or other improper actions or derelictions of duty. The commission considers a wide variety of judicial misconduct. Rudeness to litigants, lawyers and court staff, gender and ethnic bias, abuse of contempt power, delay of decision, ex parte communications, ticket-fixing, drunkenness, systematic denial of litigants' rights, improper off-bench activities and many other forms of misconduct have claimed the commission's attention. The commission is also charged with evaluating disabilities which seriously interfere with a judge's performance.

In 1992, the commission received 966 complaints. The commission ordered 136 staff inquiries and 15 preliminary investigations. The commission instituted formal proceedings in 2 matters.

The commission issued 40 advisory letters, 11 private admonishments and 3 public reprovals (see Section IV of this report for a summary of these matters).

II. RECENT CHANGES IN THE LAW



In 1992 there were no changes to the statutes and rules affecting the commission, except for a revision of the Code of Judicial Conduct, sometimes called the “canons.”

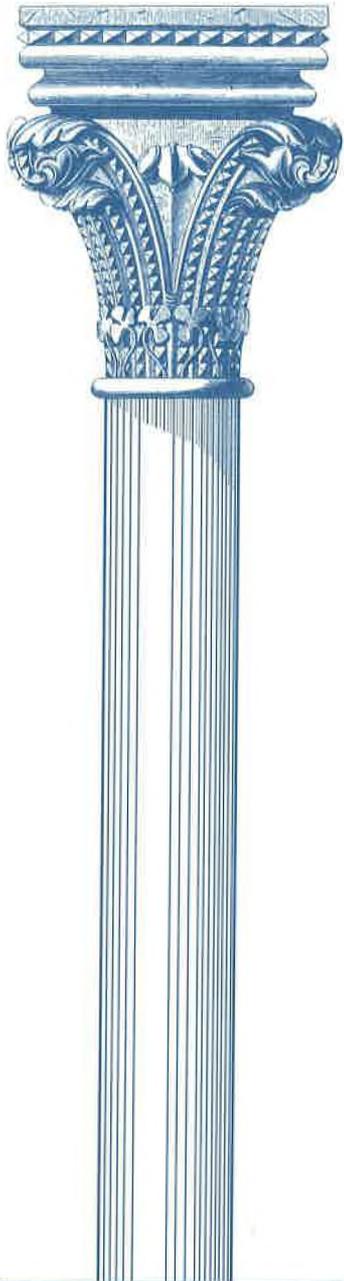
The Code of Judicial Conduct is adopted by the California Judges Association, a private organization. The California Supreme Court has said:

While the canons do not have the force of law or regulation, they reflect a judicial consensus regarding appropriate behavior, and are helpful in giving content to the constitutional standards under which disciplinary proceedings are charged. . .

We therefore expect that all judges will comply with these canons. Failure to do so suggests performance below the minimum level necessary to maintain public confidence in the administration of justice. (*Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 838, n.6.)

The California Judges Association adopted the Code of Judicial Conduct in 1974. In October 1992, the Association revised the Code, making about five dozen changes. In this annual report we publish the newly revised Code. We also publish a conversion chart, prepared by Los Angeles Superior Court Judge David Rothman, comparing the old and new Codes.

**III.
SUMMARY OF
COMMISSION
DISCIPLINARY
ACTIVITY
IN 1992**



COMPLAINTS RECEIVED AND INVESTIGATED

At the close of 1992, there were 1554 judicial positions within the commission's jurisdiction:

Justices of the Supreme Court	7
Justices of the Court of Appeal	88
Judges of the Superior Courts	789
Judges of the Municipal Courts	619
Judges of the Justice Courts	51

In 1992, the commission received 966 new complaints, all of which were carefully reviewed and evaluated. In approximately 292 cases, some informal investigation was necessary before the matter was submitted to the commission for review. In approximately 736 cases a prima facie case of misconduct was not established and the cases were closed after review by staff and the commission. The commission determined that further formal inquiry was required in certain cases.

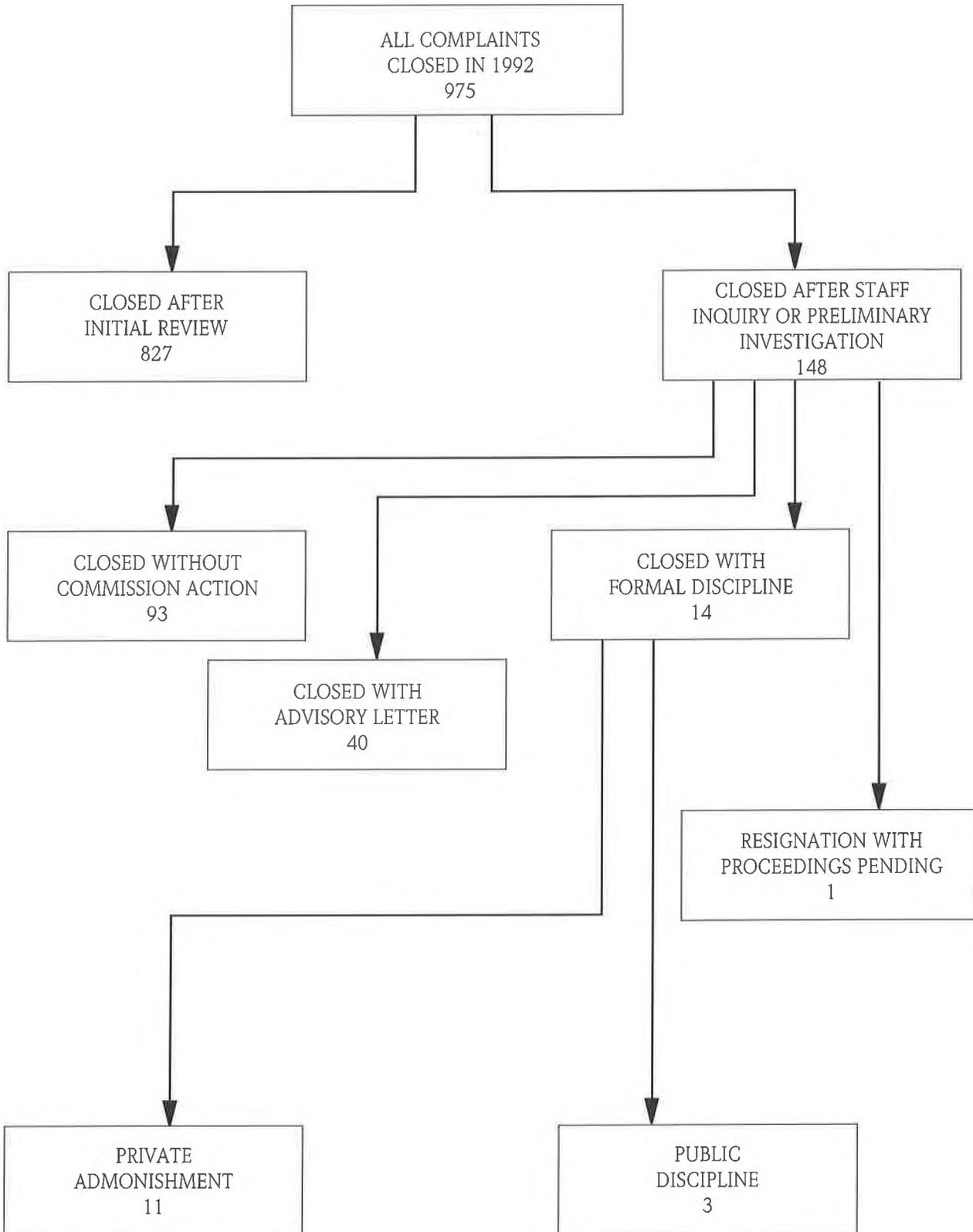
The commission ordered a "staff inquiry" (Rule of Court 904) in 136 cases. In a staff inquiry, the commission's legal staff investigates the facts underlying the complaint. Occasionally the inquiry reveals facts which dispose of the complaint and make the judge's comment unnecessary. Usually, however, the judge is asked to comment on the allegations.

Under Rules of Court 904 and 904.2, the commission may institute a "preliminary investigation" to determine whether formal proceedings should be instituted, or discipline imposed of greater severity than an advisory letter, or the case should be closed. The commission ordered 15 preliminary investigations in 1992.

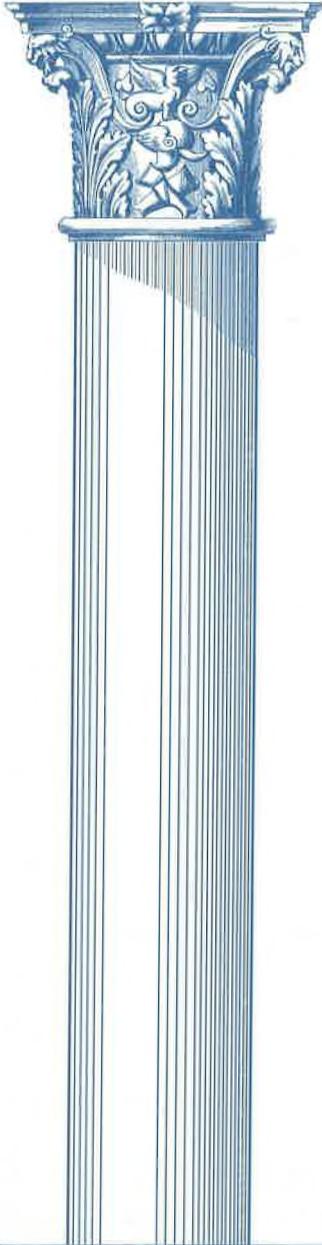
After a preliminary investigation, the commission may issue a notice of formal proceedings (Rule of Court 905), which is a statement of formal charges leading to a hearing. Such notices were issued in 2 cases in 1992.

Of the 966 complaints received in 1992, approximately 80% originated from litigants or their families. Complaints from lawyers accounted for another 8%. All others sources, including citizens, judges, court employees, jurors, and others, amounted to approximately 12%.

CHART III



IV. DISPOSITION OF COMMISSION CASES



In 1992 the commission closed 975 cases.

The commission issued 3 public reprovls, 11 private admonishments and 40 advisory letters.

One case was closed when the judge resigned during the pendency of proceedings.

At the end of the year, 3 judges were the subject of pending formal proceedings.

► 1992 Public Reprovls

Public reprovls are issued under Article VI, section 18(f)(3) of the California Constitution.

1. The commission publicly reprovcd Judge Steven Hintz of the Ventura County Municipal Court for the conduct set forth below:

On November 15, 1990, Judge Hintz abused his judicial authority by planning and executing a detention, search and warrant check of citizens lawfully present in the courtroom. The citizens were improperly detained, without reasonable suspicion or exigent circumstances, and subjected to unwarranted personal searches. The detained citizens were also improperly required to provide identification. These actions exceeded Judge Hintz's lawful authority and violated the citizens' constitutional rights.

At the conclusion of the trial in *People v. Rodriguez* in July 1990, Judge Hintz criticized the jurors for their verdict. Judge Hintz's comments regarding the verdict were improper and contrary to the Standards of Judicial Administration. Judge Hintz also improperly detained the jurors after their verdict, requiring them to sit through a separate hearing regarding the defendant. This appeared punitive of the jury and calculated to humiliate the defendant.

After the trial of *People v. Lopez* in August 1990, Judge Hintz attempted to use his judicial office for an improper personal purpose. The prosecution and defense had concluded there were valid grounds for a new trial. They submitted a stipulation to Judge Hintz, to which he attempted to add the following exculpatory

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DISPOSITION OF
COMMISSION CASES**

language: “It is further stipulated that Judge Steven Hintz committed no legal error or ethical breach in the trial.” When the parties refused to stipulate to Judge Hintz’s exculpatory language, Judge Hintz granted a new trial on the grounds of prosecutorial misconduct — grounds which were initiated and advanced by Judge Hintz. These actions constituted improper use of the judicial office for a personal purpose.

2. The commission publicly reproved Judge Bruce Van Voorhis of the Walnut Creek-Danville Municipal Court for the conduct set forth below:

Judge Van Voorhis created the appearance of prejudgment, contrary to Canon 2A of the Code of Judicial Conduct, on the following occasion:

In November 1990, in a criminal case, Judge Van Voorhis created the appearance of prejudgment in his discussion of the case in open court by improperly predicting the outcome of the case.

Judge Van Voorhis engaged in unauthorized ex parte communications, contrary to Canon 3A(4) of the Code of Judicial Conduct, on the following occasions:

In December 1990, in a probation violation matter, he improperly engaged in an unauthorized ex parte communication concerning a pending proceeding when he telephoned an attorney from court. Judge Van Voorhis asked the attorney whether he had advised the defendant, who was appearing before Judge Van Voorhis pro per, that a guilty plea on a charge in another county could result in separate punishment for violation of probation. This communication gave the appearance of improper interference with an attorney-client relationship.

For several months prior to approximately January 1991, Judge Van Voorhis engaged or attempted to engage in unauthorized ex parte communications concerning pending cases by personally making telephone calls to defendants who did not appear in court; he explained to the commission that his purpose was to reschedule the defendants’ appearances and that he was able to reschedule appearances.

Judge Van Voorhis failed to fulfill his judicial responsibility to be patient, dignified and courteous to those with whom he deals in an official capacity, contrary to Canon 3A(3) of the Code of Judicial Conduct, on the following occasions:

In two criminal cases in May 1989 and April 1990, Judge Van Voorhis’s conduct during questioning of a potential juror in each case caused that person to perceive a lack of sensitivity and to feel intimidated by the judge’s questioning.

In October 1991, when arrangements for the loaning of the neighboring court reporter faltered, Judge Van Voorhis entered the adjoining courtroom through a side door wearing his judicial robe and immediately directed that the court reporter be sent to his courtroom. The judge’s inappropriate interruption of the proceedings was an abuse of authority.

On two occasions, Judge Van Voorhis gave directions to his court staff in a manner which was perceived as harsh.

In two criminal cases in December 1989 and December 1990, Judge Van Voorhis used a sarcastic and intimidating tone toward the attorneys appearing

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before him when they requested continuances.

Judge Van Voorhis impaired public confidence in the integrity of the judiciary and brought the judiciary into disrepute through the following conduct:

Prior to his election campaign in 1986, Judge Van Voorhis and his wife were divorced, but continued to live together. During his first judicial election campaign in 1986, Judge Van Voorhis referred to her as “my wife” in his literature and in public. In making that reference, he misinformed the public of his actual marital status.

The above conduct warranted discipline under Article VI, section 18(f)(2) of the California Constitution. In particular, it was conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

In determining that a public reproof would be adequate discipline, the commission considered the absence of prior discipline, the judge’s recognition that he should have handled the incidents differently, and his assurance that this conduct will not be repeated.

3. The commission publicly reproofed Judge Craig S. Kamansky of the San Bernardino County Superior Court for the conduct set forth below:

In the course of a commission investigation concerning his off-bench conduct, Judge Kamansky was asked by the commission to supply certain videotapes. The judge agreed to supply the tapes, but before doing so, he deliberately overtyped them. When asked by the commission about the altered videotapes, the judge repeatedly denied the deliberate overtyping. When presented with evidence to the contrary, the judge ultimately admitted his misrepresentations.

Judge Kamansky’s actions constituted conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

► 1992 Private Admonishments

Private admonishments are imposed under California Rules of Court, rule 904.3. The private admonishments imposed in 1992 are summarized below. In order to maintain privacy, it has been necessary to omit certain details. This has made some summaries less informative than they otherwise would be; but since these examples are intended in part to educate judges and assist them in avoiding inappropriate conduct, we think it is better to be vague in these descriptions than to omit them altogether.

A. A judge found an ailing 83-year-old traffic defendant guilty of a pedestrian infraction and fined him \$106. The man said he did not have the money. The judge offered him two days in jail. After some further discussion the defendant said:

DEFENDANT: You raise the revenue in the most dishonest way. Demeaning.

COURT: Okay, sir, you’re remanded to the Sheriff for contempt. I find you in contempt. Five days.

DEFENDANT: Oh, 83 years old.

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COURT: You're off to jail, sir.

DEFENDANT: Oh, for God's sake. Shame on you, shame on you.

COURT: And you're going to serve the fine. . . consecutive to that.

The defendant was then immediately remanded and served six days. An audio tape revealed no disorderly behavior or interruption of the proceedings. The commission found an abuse of the contempt power.

B. A judge received gifts from attorneys practicing before the judge. The gifts had an actual value of several hundred dollars. They therefore exceeded the bounds of "ordinary social hospitality" and were improper. The judge failed to disclose on the record the judge's relationship with the attorneys and the gifts, and failed to obtain a written waiver of disqualification. In its investigation the commission found no perceived favoritism toward the donors or other impropriety in the judge's handling of cases.

C. A judge received gifts from attorneys practicing before the judge. The gifts had an actual value of several hundred dollars. They therefore exceeded the bounds of "ordinary social hospitality" and were improper. The judge failed to disclose on the record the judge's relationship with the attorneys and the gifts, and failed to obtain a written waiver of disqualification. In its investigation the commission found no perceived favoritism toward the donors or other impropriety in the judge's handling of cases.

D. A judge's manner of sentencing mocked the defendant.

E. (1) A day or two after signing a search warrant, the judge encountered the owner of the premises to be searched. The judge casually mentioned that the judge had heard there might be criminal activity on the premises. The owner correctly inferred from this statement that the police were interested in the premises. (2) The judge signed a declaration that the judge was unaware of any court cases involving a certain person. The declaration was for use by the person in an administrative hearing in a licensing matter. Signing the declaration lent the prestige of judicial office to advance private interests. (3) The judge yelled at an attorney for filing a peremptory challenge against the judge, then improperly ordered the challenge "withdrawn" and heard the case. There was significant mitigation. The admonishment was severe.

F. A judge drove under the influence of alcohol, thereby committing a misdemeanor. The judge's failure to comply with the law was an improper action. The judge failed to observe the high standards of conduct expected of California judges and diminished public confidence in the judiciary. Several years earlier, before joining the bench, the judge had been convicted of the same offense. In the disposition of the current matter, the judge represented to the commission that the judge had undertaken to abstain from alcohol altogether. The admonishment was severe.

G. A judge abused the contempt power. The judge instituted contempt proceedings against a litigant and his attorney after receiving information outside of court that the litigant had allegedly publicized an alleged mischaracterization of the

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• court's ruling. No affidavit was filed to initiate the proceedings and no evidence was
• taken at the hearing. The judge nonetheless found the litigant in contempt. The
• judge later vacated the contempt.

• **H.** A judge received gifts from parties and attorneys appearing before the
• judge. The judge also received gifts from parties that were frequent litigants in the
• court on which the judge sat. The gifts had an actual value of many hundred dollars.
• The gifts therefore were not "ordinary social hospitality" and were improper. The
• judge failed to disclose on the record the judge's relationships and the gifts, and
• failed to obtain a written waiver of disqualification. In its investigation the
• commission found no perceived favoritism toward the donors or other impropriety
• in the judge's handling of cases. The admonishment was severe.

• **I.** A judge engaged an attorney to represent the judge's relative in a civil
• matter. The relative's claim was lost allegedly because of the attorney's malpractice.
• The judge then negotiated with the attorney to settle the malpractice claim. The
• attorney agreed to, and did, make installment payments to the judge over the course
• of several years. The judge passed the payments on to the relative. During this
• period, the attorney continued to practice before the judge. No disclosure of the
• relationship or the payments was made to other parties.

• **J.** A judge engaged in actions which gave the appearance of attempting to
• retaliate against two individuals who had provided information about the judge to
• the commission.

• **K.** A judge drove under the influence of alcohol, thereby committing a
• misdemeanor. The judge's failure to comply with the law was an improper action.
• The judge failed to observe the high standards of conduct expected of California
• judges and diminished public confidence in the judiciary.

•
• **► 1992 Advisory Letters**

• The commission will sometimes advise caution or express disapproval of a
• judge's conduct without imposing formal discipline. This milder form of action is
• contained in letters of advice or disapproval called "advisory letters." They are
• provided for in Rule 904.1. Over the years the commission has issued them in a
• variety of situations:

• • The commission sometimes issues advisory letters when the impropriety is
• isolated or relatively minor. For instance, a judge who made an improper comment
• to a jury on a single occasion might receive an advisory letter.

• • Advisory letters are also used when the misconduct is more serious —
• sometimes much more serious — but the judge has demonstrated an understanding
• of the problem and has taken steps to improve.

• • Advisory letters are especially useful when there is an appearance of
• impropriety, but the commission is not convinced of the judge's bad faith.

• • An advisory letter might be appropriate when there is significant misconduct
• but substantial mitigation.

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1. A judge made statements implying that the judge would make adverse rulings on the merits of a case to punish the litigants for poor courtroom behavior.
2. A judge was rude to witnesses. The judge said, for instance, that “I couldn’t care less” about one witness’s testimony. When an attorney attempted to defend the witnesses, the judge said, “You want me to laugh in your face?”
3. A judge twice amended a small claims judgment dismissing two defendants after receiving information *ex parte* from one of the judgment debtors.
4. After ruling but before entry of judgment in a civil action, a judge discussed the case *ex parte* with the defendant. The judge gave advice regarding compliance with the judgment and instructed the defendant that any further litigation between the parties should be brought before the judge. In an unrelated case, the judge ordered the same plaintiff not to appear again *pro per* on any civil matter. When the plaintiff complained to the presiding judge about the order banning him from appearing *pro per*, the judge wrote a memo to the presiding judge suggesting that the ruling be maintained in other cases and opining that the plaintiff was trying to manipulate the system.
5. A judge summarily ordered a party into custody without any order finding the party in contempt. Later the judge held a hearing and sentenced the party; but a written order was not properly entered. The sentence included “three years probation,” which exceeds the court’s jurisdiction in civil contempt.
6. A judge spoke at a fundraiser for a legislative initiative. The judge made comments which could reasonably have been construed as indulgent of a certain kind of criminal activity.
7. A judge wrote a letter on judicial letterhead to television executives to complain about a proposed mini-series that supposedly defamed the judge’s relative.
8. A judge wrote a letter on judicial letterhead to a school to complain of a teacher’s treatment of the judge’s child. The stationery was marked “personal” and stated, “Not typed or mailed at government expense.” Nonetheless, its use for a private purpose was a misuse of the prestige of office.
9. A judge took 98 days to rule on one motion and 126 days on another.
10. A litigant mentioned in open court that a certain attorney had helped the party with advice and information, prepared the judgment which the judge was being asked to sign, and had represented the party in previous cases. The attorney was the judge’s child. The judge made no disclosure of that fact.
11. A judge performed a wedding ceremony on a weekday. A few weeks later the judge accepted a gift from the couple in apparent violation of Penal Code section 94.5.
12. A judge gave the appearance of soliciting contributions from attorneys and their clients to the election campaign of a candidate for a non-judicial office.
13. At the conclusion of a trial, the judge cited an attorney for half a dozen alleged acts of contempt occurring during the trial. The judge was obliged to cite the attorney properly at the time of the conduct. This was not done.

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though the stationery was marked “personal,” there appeared to be an abuse of position.

22. A judge communicated ex parte with one party in litigation about a pending matter. In an unrelated case, the judge ordered a mental hospital to hold an indigent criminal beyond the term allowed by law.

23. A judge called an attorney an “asshole” at a settlement conference.

24. A political meeting was held at the judge’s house. The invitation stated that the meeting would be held “at the home of _____ and _____” and gave the name of the judge and the judge’s spouse.

25. A judge took 11 and 12 months to make certain rulings in two complex civil matters.

26. A judge persisted in incorrect sentencing practices after several appellate opinions gave specific direction to the judge on the point.

27. A judge wrote a letter on judicial letterhead to ask a city department to reschedule the use of recreational facilities to suit the judge’s personal convenience.

28. A judge responded to public criticism of a sentence by sending an explanation to the news media. The explanation was not confined to procedural matters, but commented on the reasons behind the sentence.

29. A judge invited judges and court commissioners to an open house for a candidate for non-judicial office. The invitation was on court memorandum stationery.

30. A judge made rude remarks that suggested bias against a certain ethnic group. For instance, with no basis other than a defendant’s ethnicity, the judge said the defendant probably was not legally in the United States.

31. A judge made comments to the press which gave the appearance of gender bias.

32. A judge delayed four months in acting on proposed orders submitted for the judge’s signature.

33. A judge advised a witness in a criminal case to obtain counsel. A few days later, outside court, the judge encountered the witness’s employer and discussed the employee’s need for counsel. The judge also appeared to advise the employer that the employer might have certain obligations or liabilities.

34. A judge was sometimes rude to litigants. The judge did not follow proper procedures when holding latecomers in contempt: In questioning the alleged contemnors about the reasons for lateness, the judge did not mention that a finding of contempt was being considered. The written contempt order recited only that the defendant was late, but failed to recite other necessary jurisdictional facts.

sending the judge its inquiry letter, the commission does not seek information on the merits of the complaint. Rather, the commission simply wishes to determine whether the judge has in place a procedure that provides for review of such complaints and a timely response to complainants, and if so, whether the complainant in question has received a response.

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35. In apparent retaliation for a party filing a peremptory disqualification under C.C.P. section 170.6, a judge set a short cause hearing six months in the future — a period of time far in excess of the usual for similar hearings.

36. A small claims litigant refused to stipulate to a temporary judge. The judge to whom the case was then assigned interrogated the parties as to which of them had refused to stipulate, giving the appearance that the judge would retaliate against that party. The judge also made remarks disparaging small claims litigation.

37. When a prosecutor failed to appear after a short recess in a criminal trial, the judge conducted the proceedings in the prosecutor's absence.

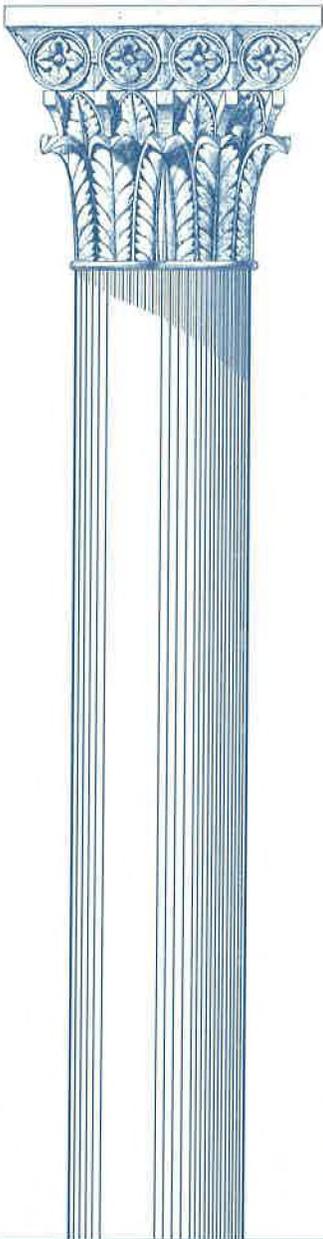
38. A judge made a public address to a legislative body to ask for money for a certain project. In illustrating the need for the money, the judge referred to particular defendants awaiting trial in the judge's court as "major criminals" and made other remarks about the facts of the pending case.

39. A judge made repeated contact with prosecutors in the judge's county about the progress of their investigation and prosecution of a case in which a relative of the judge was alleged to be a victim. The communications could have been construed as an attempt to influence the prosecutor. The judge used court stationery in communicating with a prosecutor about the matter.

40. A judge took guilty pleas on three charges from an in-custody defendant who had entered not-guilty pleas on two of the charges the day before and had been assigned a public defender. The judge knew of the earlier pleas but made no inquiry about whether the defendant was represented by counsel.²

²The advisory letter cited *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 849-850, on the need to contact counsel before taking a guilty plea from a represented defendant.

V. VOLUNTARY DISABILITY RETIREMENT



In addition to its duties as an investigator of judicial misconduct, the commission reviews applications for disability retirement by judges. Before taking effect, a disability retirement must be approved by the commission and the Chief Justice. See Government Code, sections 75060 - 75064, and Policy Declaration 4.4, which are printed in the appendix to this report.

In 1992 the commission neither approved nor denied any applications for disability retirement. Two applications received in 1991 were withdrawn by the applicants. The commission received two new applications, which were still pending at the end of the year.